

## REMARKS/ARGUMENTS

Claims 44-132 were previously pending in the application. Claims 52-55, 58, 77, 78, 83, 90, 105-108, 111 and 118 were previously withdrawn from consideration, and are cancelled herein. Claims 46, 56, 71-76, 80-82, 84-89, 91-97, 104, 126, 130 and 132 are cancelled herein. Claims 44-45, 47-51, 57, 59-70, 79, 98-103, 109-110, 112-117, 119-125, 127-129 and 131 are amended herein. Assuming the entry of this amendment, claims 44-45, 47-51, 57, 59-70, 79, 98-103, 109-110, 112-117, 119-125, 127-129 and 131 are now pending in the application. Applicant submits that no new matter was added and the support for the amendments may be found throughout the specification as originally filed. Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

## CLAIM REJECTIONS

### 1). 35 U.S.C. §112, second paragraph:

On page 2 of the Office Action, the Examiner rejected claims 44-49, 51, 56, 59-63, 66-76, 80-81, 84-88, 91-104, 109, 112-116 and 119-132 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention.

Claims 46, 56, 71-76, 80-81, 84-88, 91-97, 104, 126, 130 and 132 have been cancelled, thus obviating the rejection of those claims. Claims 44-45, 47-49, 51, 59-63, 66-70, 98-103, 109, 112-116, 124-125, 127-129 and 131 are amended herein. Applicant submits that claims 44-45, 47-49, 51, 59-63, 66-70, 98-103, 109, 112-116, 124-125, 127-129 and 131, as amended, meet the requirements of 35 U.S.C. §112, second paragraph. Claims 119-123 include all the features of claim 99, from which they depend. Applicant submits that the amendments to claim 99 obviate the rejection of dependent claims 119-123.

Applicant submits that all pending claims meet the requirements of 35 U.S.C. §112, second paragraph. Therefore, Applicant respectfully requests that the rejection of claims 44-45, 47-49, 51, 59-63, 66-70, 98-103, 109, 112-116, 119-125, 127-129 and 131 be withdrawn.

### 2). 35 U.S.C. §103(a):

On page 4 of the Office Action, the Examiner rejected claims 44-51, 56-57, 59-61, 66-76, 80-82, 84-85, 91-104, 109-110, 112-114 and 119-132 under 35 U.S.C. 103(a) as being unpatentable over Kipp (U.S. Patent No. 5,890,136, hereinafter "Kipp") in view of Domain et al. (U.S. Patent No. 5,158,155, hereinafter "Domain"). Claims 46, 56, 71-76, 80-82, 84-85, 91-97, 104, 126, 130 and 132 have been cancelled, thus, obviating the rejection. Therefore, only the rejections of claims 44-45, 47-51, 57, 59-61, 66-71, 98-103, 109-110, 112-114, 119-125, 127-129 and 131 will be addressed below.

Claim 44, as amended, recites in relevant part:

sorting, by a materials handling system in communication with the core computer system, the commercial and retail classified goods and serviceable items into separate areas of the centralized order processing portion of the structural facility based on a time-sensitivity of the goods or serviceable items;

transporting, by the materials handling system in communication with the core computer system, customer ordered goods or serviceable items to:

i) if the customer is not waiting for delivery, a final order assembly and consolidation area of the structural

facility for later delivery to the customer; or  
ii) if the customer is waiting for delivery, a drive-thru order pick up area of the structural facility for delivery to the customer;  
tracking, by the core computer system, customer information including at least one of order histories, preferred items and ordering trends of the customer; and  
predicting, by the core computer system based on the customer information, future orders of the customer;  
wherein the step of directing includes the step of optimizing, by the core computer system, vehicle traffic flow through the drive-thru pick up area. [emphasis added].

Thus, claim 44 recites a method of delivering goods to a customer wherein the core computer system sorts the goods into different areas of the facility based on a time-sensitive nature of the goods. The core computer system directs ordered goods to be transported to one of a holding area or a pick up area, based on whether the customer is picking up their order right away. The core computer system tracks customer information, such as order histories, preferred items or ordering trends, and predicts future orders by the customer. Further, the core computer system optimizes traffic flow of customers through the drive-thru pick up area. See Applicant's specification as originally filed, paragraphs 0066, 0068, 0081, 0084-0085, 00120-00122, 00125 and 00128. The cited references, taken alone or in combination, fail to describe or suggest all of the features recited in Applicant's claim 44, as described below.

Kipp is directed generally to a quick stop mass retail system for ordering and purchasing articles from a remote location for pickup at an automated store. More specifically, Kipp is directed to a system for a consumer to purchase goods, via telephone or the internet, which the consumer can later pick up at a store. See Kipp, Col. 4, line 55 – Col. 5, line 17. As noted by the Examiner, Kipp does disclose a facility having a central order processing portion, a plurality of drive-through pick up areas and a central computer in communication with a consumer. See Kipp, Col. 4, line 62 – Col. 6, line 1. However, Kipp does not disclose or suggest features of amended claim 44, for example, "tracking ... customer information including at least one of order histories, preferred items and ordering trends of the customer; and predicting ... future orders of the customer," or "transporting ... customer ordered goods ... to: i) if the customer is not waiting for delivery, a final order assembly ... area ... or ii) if the customer is waiting for delivery, a drive-thru order pick up area." As noted by the Examiner, Kipp does not disclose optimizing vehicle traffic flow through the drive-up facility.

Domain is directed generally to a vendors' structural complex that consolidates several types of retail vendors in a single drive-up complex. As noted by the Examiner, Domain does disclose a computer controlled traffic optimization system for optimizing traffic flow through a drive-up retail facility and multiple staging lanes. See Domain, Col. 5, lines 40-61. However, Domain does not disclose or suggest features of amended claim 44, for example, "tracking ... customer information including at least one of order histories, preferred items and ordering trends of the customer; and predicting ... future orders of the customer," or "transporting ... customer ordered goods ... to: i) if the customer is not waiting for delivery, a final order assembly ... area ... or ii) if the customer is waiting for delivery, a drive-thru order pick up area."

Independent claims 99 and 124, while not identical to claim 44, have been amended to contain similar features as amended claim 44, for example, "tracking ... customer information including at least one of order histories, preferred items and ordering trends of the customer; and predicting ... future orders of the customer," or "transporting ... customer ordered goods ... to: i) if the customer is not waiting for delivery, a final order assembly ... area ... or ii) if the customer is waiting for delivery, a drive-thru order

pick up area.” Claims 45, 47-51, 57, 59-61, 66-71 and 98 include all the features of independent claim 44, from which they variously depend. Claims 100-103, 109-110, 112-114, 119-123 include all the features of independent claim 99, from which they variously depend. Claims 127-129 and 131 include all the features of independent claim 124, from which they variously depend. Thus, Applicant submits that claims 45, 47-51, 57, 59-61, 66-71, 98-103, 109-110, 112-114, 119-125, 127-129 and 131 are also allowable for at least the reasons set forth above with respect to Applicant’s claim 44. Accordingly, Applicants respectfully request that the rejection of claims 44-45, 47-51, 57, 59-61, 66-71, 98-103, 109-110, 112-114, 119-125, 127-129 and 131 under 35 U.S.C. 103(a) be withdrawn.

On page 6 of the Office Action, the Examiner rejected claims 62-64, 86-89 and 115-117 under 35 U.S.C. 103(a) as being unpatentable over Kipp in view of Dickson (U.S. Patent No. 6,810,304, hereinafter “Dickson”). Claims 86-89 are cancelled, thus obviating the rejection.

As described above in regard to claim 44, Kipp fails to disclose or suggest all the features of independent claims 44 and 99, for example, “tracking … customer information including at least one of order histories, preferred items and ordering trends of the customer; and predicting … future orders of the customer,” or “transporting … customer ordered goods … to: i) if the customer is not waiting for delivery, a final order assembly … area … or ii) if the customer is waiting for delivery, a drive-thru order pick up area.”

Dickson is directed generally to a multistage ordering system in a fueling and retail environment. As noted by the Examiner, Dickson does disclose a food order by a customer and food pick up area for delivery of the order. See Dickson, Col. 1, lines 30-48. However, Dickson does not disclose or suggest features of amended independent claims 44 and 99, for example, “tracking … customer information including at least one of order histories, preferred items and ordering trends of the customer; and predicting … future orders of the customer,” or “transporting … customer ordered goods … to: i) if the customer is not waiting for delivery, a final order assembly … area … or ii) if the customer is waiting for delivery, a drive-thru order pick up area.”

. Therefore, as described above, neither Kipp nor Dickson, whether taken alone or in combination, disclose or suggest the features of Applicant’s independent claims 44 and 99. Claims 62-64 include all the features of claim 44, from which they depend. Claims 115-117 include all the features of claim 99, from which they depend. Therefore, Applicant submits that claims 62-64 and 115-117 are allowable over the cited references for at least the reasons set forth above with regard to claim 44. Accordingly, Applicant respectfully requests that the rejection of claims 62-64 and 115-117 under 35 U.S.C. 103(a) be withdrawn.

Therefore, none of the cited references, whether taken alone or in combination, disclose or suggest all the features of Applicant’s claims 44-45, 47-51, 57, 59-70, 79, 98-103, 109-110, 112-117, 119-125, 127-129 and 131.

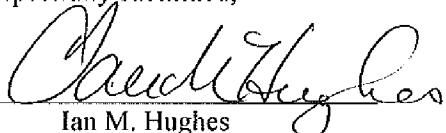
To support a proper rejection under 35 U.S.C. 103(a), the prior art must suggest the desirability of the modification or combination of references. See, e.g., *Smithkline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878, 887 (Fed. Cir. 1988) (A challenger to the validity of a patent “cannot pick and choose among the individual elements of assorted prior art references to create the claimed invention…[the challenger] has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination.”). Without a suggestion in the prior art for a necessary modification, a rejection on the grounds of obviousness based solely on the advantages provided by that claimed invention is an improper use of hindsight. See, e.g., *In re Fritch*, 972, F.2d 1260, 1266 (Fed. Cir. 1992) (“[I]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered

obvious . . . [o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."); *Symbol Technologies Inc. v. Opticon Inc.*, 17 USPQ2d 1737, 1746 (S.D.N.Y. 1990), *aff'd*, 935 F.2d 1569 (Fed. Cir. 1991) ("That a technician, in hindsight, could combine elements known within the technology to produce the contested patent does not make the patent obvious to one skilled in the art at the time the patent was issued.").

Applicant submits that all now-pending claims are allowable over the cited references for at least the reasons set forth above. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. 103(a) be withdrawn. Therefore, Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully requested. In the event that the Examiner believes that this amendment does not place the application in condition for allowance, Applicant requests a telephonic interview between the Examiner and Applicant's attorney Ian M. Hughes to discuss this amendment. Applicant requests that the Examiner call Mr. Hughes (610-640-9351) to arrange a convenient time for such an interview.

Respectfully submitted,

Date: August 28, 2009  
Customer No. 76277  
IP Legal Services LLC  
1500 East Lancaster Ave., Suite 100  
P.O. Box 1027  
Paoli, Pennsylvania 19301



Ian M. Hughes  
Registration No. 41,083  
William R. Thomas  
Registration No. 62,500  
Attorneys for Applicants  
(610) 640-9351 (phone)  
(610) 640-9353 (fax)